* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 6th May, 2024**
Pronounced on: 5th August, 2024

\+ RFA 531/2023 & CM APPL. 34622/2023 & CM APPL. 26715/2024

M/S GREENWAYS THROUGH ITS PARTNER ..... Appellant

Through: Mr. Sanjeev Sindhwani, Senior Advocate with Mr. Praveen Kumar, Mr. Neerajpal, Ms. Surbhi Sharma, and Ms. Vrinda Anand, Advocates

versus

Y.N. GUPTA (DECEASED) THROUGH ITS LRS & ORS.

..... Respondents

Through: Mr. Rajat Aneja, Ms. Sonali Chopra and Ms. Shivangi Chawla, Advocates
Ms. Aakanksha Kaul and Ms. Rhea Borkotoky, Advocates for R-(c)/Anjeli Vaid

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The instant regular first appeal has been filed on behalf of the appellant under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (hereinafter "CPC") against the judgment and decree dated 30th May, 2023 passed by the learned ADJ-01, New Delhi, Patiala House Courts, Delhi in civil suit bearing CS DJ no. 56700/2016 (hereinafter "impugned judgment).

2. On 25th November, 2013, Sh. YN Gupta (since deceased), erstwhile plaintiff (respondent herein through legal heirs) had instituted a civil suit bearing CS DJ no. 56700/2016 for ejectment and mandatory injunction against the defendant (appellant herein) seeking eviction from back portion of property bearing no. E-20, Connaught Place, New Delhi comprising of a store and mezzanine therein (hereinafter "suit property).

3. In the aforesaid civil suit, the appellant herein filed its written statement and controverted the case of the plaintiff pursuant to which a replication was filed on 19th February, 2014. On 19th February, 2014, the erstwhile plaintiff Sh. YN Gupta also file an application under Order XII Rule 6 of the CPC seeking decree on the basis of admissions, pursuant to which Sh. YN Gupta expired on 12th January, 2019 and accordingly, the legal heirs of Late Sh. YN Gupta were substituted as legal heirs in the aforementioned civil suit.

4. In the meanwhile, on 15th November, 2022, the learned Trial Court rejected the amendment application moved by the appellant herein, seeking to amend the written statement. The said rejection order was assailed by the present appellant before this Court in CM no. 302/2023 which was allowed vide order dated 24th February, 2023, and accordingly, the amended written statement dated 7th march, 2023 was taken on record. Pertinently, the plaintiff/respondent chose not to file any replication to the amended written statement and the replication already on record was taken as replication to the amended written statement.

5. Pursuant to the above, the learned Trial Court heard the arguments on the application filed under Order XII Rule 6 of the CPC and vide the impugned judgment dated 30th May, 2023, the same was allowed and

decree for ejectment of the appellant/defendant from the *'back portion of the main shop at E-20, Connaught Place, New Delhi and as shown in green colour'* was passed against the appellant and the matter was listed for further proceedings *qua* the other reliefs sought in the plaint.

6. Being aggrieved by the aforementioned impugned judgment, the appellant has filed the instant regular first appeal seeking setting aside of the same.

PLEADINGS BEFORE THIS COURT

7. The instant regular first appeal dated 6th July, 2023 has been filed by the appellant on the following grounds:

> "*..A.* ***BECAUSE*** *the Judgment of the Ld. Trial Court is against the facts and law of the case and is also against the basic principles of law.*
> *B.* ***BECAUSE*** *the Ld. Trial Court has erred in granting possession of rear portion of prope1iy no. E-22, Connaught Place, New Delhi whereas possession was sought by the erstwhile plaintiff of rear portion of prope1y no. E-20, Connaught Place, New Delhi.*
> *C.* ***BECAUSE*** *the Ld. Trial Court has erred in travelling beyond the pleadings which is the foundation for the civil court to exercise its jurisdiction. It is settled position of law that jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence led in etc. However, in the present case, the Ld. Trial Court has granted a relief which was not pleaded.*
> *D.* ***BECAUSE*** *the Ld. Trial Court further erred in not appreciating that it did not have the jurisdiction to alter the prayer sought by the Plaintiff in the plaint and had the jurisdiction only to grant or reject the prayers made in the plaint. In the present suit, the prayer (A) in the plaint reads as under:.....*
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> *Thus, it can be seen that eviction was sought on the basis of*

site plan, filed along with the Lease Deed (which was not admissible as the Lease Deed was unstamped and unregistered) whereas the decree has been passed on the basis of copy of site plan lying in another suit bearing CS No. 149 of 2010, which document was not filed in the present suit by either party and which suit is not part of record of the present suit. The impugned judgement and decree is therefore liable to be set aside.

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H. ***BECAUSE*** *the Ld. Trial Court further erred in appreciating the nature of power vested in come under Order XII Rule 6 CPC which confers discretionary power on a court and does not empower a party, as a matter of right, to a decree on admissions.*

I. ***BECAUSE*** *the Ld. Trial Court erred in not appreciating that the Plaintiff has claimed himself to be the owner of the rear portion of E-20 and thus was seeking eviction of the Defendant from the said portion, erroneously whereas admittedly the appellants are tenants in rear portion of property no. E-22, Connaught Place, New Delhi vide Memorandum of Settlement dated 20.03.1980, which property is owned by his son Mr. Sanjay Gupta.*

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L. ***BECAUSE*** *the Ld. Trial Court erred in not appreciating that the defence raised by the Defendant/Appellant goes to the root of the matter and the same would have to be tested on the anvil of trial. The fact that the tenanted premises is part of E-22 and it is not the part of E-20 is borne out of the Mutual Settlement dated 20.3.1980 whereby it was clarified that rear portion was part of E-22.*

M. ***BECAUSE*** *the Ld. Trial Court erred in not appreciating that in order to claim a decree on admissions in an eviction matter, the Plaintiff has to prove that landlord tenant relationship is admitted, rent is above Rs. 3500/- and the tenancy has been terminated. In the present case, it is not admitted that Late Mr. Y N Gupta, erstwhile Plaintiff was the*

landlord in terms of Transfer of Prope1iy Act and the tenanted premises is owned by Mr. Sanjay Gupta, son of Plaintiff, who is the Landlord/Owner. It is admitted that the rent is above Rs. 3500/- per month but as the notice of termination is invalid because same was issued by Late Mr. Y N Gupta and not Mr. Sanjay Gupta and also that it pertains to E-20 and not E-22. Thus, in the facts of the present case no eviction can be granted under provisions of Order 12 Rule 6 CPC…"

8. The written submissions dated 4th May, 2024, filed on behalf of the respondent, refuting the appellant's case is on record. Relevant portion of the same is as under:

"…1. The Defendant/Appellant herein has contended that the Ld. Trial Court has erred in passing a decree of eviction of the Appellant from a property which is not the 'suit property'. [See Grounds B, C, D, E & F of the Appeal] The main objection of the Defendant/Appellant herein in this regard is that suit property is not the rear/back portion of E-20, Connaught Place, New Delhi but a part of E-22, Connaught Place, New Delhi.

It is submitted on behalf of the Plaintiff/Respondents herein that:

a) The suit property was identified by the Plaintiff/Respondents herein as the "back portion of the main shop at the premises bearing No. E-20, Connaught Place, New Delhi – 110001, comprising of a store and a mezzanine thereon". [See Para 1 & Para 3 of the Plaint @ Page 263 & 265 of the TCR]

b) The Defendant/Appellant herein did not dispute the identity of the suit property as it did not deny the Site Plan annexed by the Plaintiff with the present Suit wherein the suit property has been identified in 'red' colour and in fact had admitted that the same was the Site Plan that was filed by the Defendant/Appellant herein itself in the earlier suit between the parties i.e., CS No. 49/2013. [See Para 3 of the Reply on Merits of the Amended Written

Statement @ Page 336 of the TCR]

c) In fact, the Defendant admitted that the Site Plan filed by the Plaintiff along with the Plaint shows the "situs" of the suit property. [See Para 7 of the Reply on Merits of the Defendant's Reply to the Plaintiff's Application under Order XII Rule 6 of the Code of Civil Procedure, 1908 @ Page 527 of the TCR]

d) Accordingly, is evident that the identity of the suit property was not in dispute in the suit. At best, with a view to create the illusion of a defence, what was disputed by the Defendant was the property number by which the suit property is referred to.

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1. The Defendant/Appellant herein has contended that in Para 3 of the 'Preliminary Objections' of its amended Written Statement it stated that the suit was silent qua the area from which the eviction was sought and no replication qua the same was filed by the Plaintiff/Respondents herein. ***[See Ground W of the Appeal]***

It is submitted on behalf of the Plaintiff/Respondents herein that this contention is incorrect for the reason that the said 'Preliminary Objection' was taken by the Defendant/Appellant herein in Para 6 of the 'Preliminary Objections' of its original Written Statement and the same was duly responded to by the Plaintiff/Respondents herein in their Replication. Further, vide Order dated 23.03.2023, the Plaintiff/Respondents herein original Replication was treated as the Replication to the amended Written Statement. ***[See Para 6 of the 'Preliminary Objections' of the original Written Statement @ Page 305 of the TCR & see Para 6 of the 'Reply to Preliminary Objections' of the Replication @ Page 36 of the TCR]***

2. The Defendant/Appellant herein has contended that in Para 3 of the 'Preliminary Objections' of its amended Written Statement it stated that the as per factual position, which was mentioned in the affidavit of evidence filed by the Defendant/Appellant herein in the earlier Suit between the

parties (CS No. 49/2013) the area on the Ground Floor admeasured 150 Sq. Ft. and the area of the Mezzanine Floor admeasures 290 Sq. Ft.
It is submitted on behalf of the Plaintiff/Respondents herein that this contention is incorrect on account of the fact that the aforesaid alleged measurements were never mentioned by the Defendant/Appellant herein in the pleadings filed by it in the earlier Suit between the parties (CS No. 49/2013) and the statement in this regard found in the affidavit of evidence of the Defendant/Appellant herein cannot be relied on for being beyond pleadings.
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... Further, it is the settled position in law that in a suit between a landlord and tenant, the question of title to the lease property is irrelevant. Reliance in this regard is placed on Precision Steels Vs. Reeta Salwan reported as (2013) 205 DLT 695.
Accordingly, the Ld. Trial Court, in its Judgment dated 30.05.2023, has rightly held that the landlord-tenant relationship between the parties has been established…
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The Site Plan referred to by the Ld. Trial Court is the one (1) of the three (3) site plans filed by the Defendant/Appellant herein in the earlier suit between the parties i.e. CS No. 149/2010. The said Site Plan was a part of the record before the Ld. Trial Court on account of the fact that vide Order dated 18.01.2018, based on the submissions of both the parties, the entire case file of CS No. 149/2010; Y.N. Gupta Vs. Greenways was summoned from the record room of Tis Hazari Court. ***[See Order dated 18.01.2018 @ Page 93 of the TCR].***

Further, the scope of Order XII Rule 6 of the Code of Civil Procedure has been discussed at length in the landmark judgment of Sky Land International Pvt. Ltd. Vs. Kavita P. Lalwani reported as MANU/DE/2203/2012…"

9. Written submissions dated 13th May, 2024, filed on behalf of the appellant is also on record.

SUBMISSIONS

(on behalf of the appellant)

10. Mr. Sanjeev Sindhwani, learned senior counsel appearing on behalf of the appellant submitted that the impugned judgment is bad in law and liable to be set aside since the same has been passed without taking into the consideration the entire facts and circumstances of the case.

11. It is submitted that the learned Trial Court failed to appreciate that as per the settled position of law *qua* Order XII Rule 6 of the CPC, in order to pass a judgment on admission, there must be absolutely clear, unambiguous and unequivocal admissions. Reliance in this regard has been placed upon the judgment of ***Jeevan Diesels & Electricals Ltd. v. Jasbir Singh Chadha***[1].

12. It is submitted that in the present case, there is not even a single clear admission which warrants judgments, rather the learned Trial Court failed to appreciate that there are strong and explicit defences and objections taken by the appellant in its written statement as well as in the reply to the application filed under Order XII Rule 6 of the CPC.

13. It is submitted that in its amended written statement, the appellant, has specifically disputed the contentions of the plaint. It is also submitted that the appellant explicitly stated that the subject property has been wrongly described in the plaint as 'back portion of *E-20*' which actually is part of 'property bearing no. *E-22*'.

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[1] (2010) 6 SCC 601

14. It is submitted that the learned Trial Court failed to appreciate that the erstwhile plaintiff, late Sh. YN Gupta, was not competent, either to terminate the tenancy or to institute the suit due to the reason that vide a compromise decree dated 2nd November, 1964, executed between the plaintiff's family in a tenant wise division, the property bearing no. E-22 (which at that time was in the tenancy of one Sh. Gulzari Lal) fell into the share of Sh. Sanjay Gupta. Thus, only Sh. Sanjay Gupta is the competent person to terminate the tenancy and to institute the suit.

15. It is submitted that the learned Trial Court failed to appreciate that the termination of the tenancy was disputed as the same did not pertain to the correct premises and also for the reason of termination by a person not competent to terminate the said tenancy.

16. It is submitted that the learned Trial Court failed to take into consideration that the appellant specifically pleaded in its written statement that when the suit property was let out in the year 1980, the same was done with an understanding that the usage of two tenancies (i.e., the already existing old tenancy of E-20 in favour of one Sh. Attar Chand Jain, partner M/s Greenways and the new tenancy of E-22) can be merged by the appellant/defendant as per its requirement.

17. It is further submitted that, for this purpose, it has been specifically averred in the written statement that '*specific permission was given to remove the intervening wall and construct an access from the Ground Floor shop to the Mezzanine floors for the purpose of the user*.'

18. It is also submitted that since there is a specific pleading in the written statement, therefore, the learned Trial Court cannot pick away and choose to evict the appellant/defendant from subsequent tenancy (i.e., E-

22) unless and until the plaintiff can seek possession of the existing tenancy (i.e., E-20) in accordance with the Delhi Rent Control Act, 1958 (hereinafter "DRC Act") (as the existing tenancy was protected under the said Act).

19. It is submitted that the appellant had specifically pleaded in the written statement that there exists a mutual settlement agreement (supplemental agreement) to correct details of the premises clarifying that the premises being let out in the year 1980 was part of E-22 and not E-20. The learned Trial Court erred by not considering the important facts/ objections raised in the written statement and passing a judgment in ignorance of facts warrants setting aside of the same and the same was also in ***Parivar Seva Sansthan v. Dr. Veena Kalra***[2].

20. It is submitted that the learned Trial Court did not consider the appellant's defences pleaded in the written statement with respect to an understanding of merger of usage of two premises and proscription upon the plaintiff for seeking eviction from one property after such merger, and the learned Trial Court failed to appreciate that there is lack of denial thereof in the replication.

21. It is further submitted that evidently there is a denial of the aforesaid facts and circumstances, thus, the same warrants a trial in order to establish the settled factual position. Moreover, it is indisputable that the written statement visibly sets up an agreement between the parties that *firstly*, the premises under new tenancy would be merged with premises under old tenancy, and *secondly*, that the plaintiff shall not seek ejectment from premises under new tenancy until he can legally seek

[2] **2000 SCC OnLine Del 469**

possession of the already existing old tenancy.

22. It is submitted that the plaintiff in his plaint also seeks prayer 'B' in the form of mandatory injunction seeking direction *"to restore the lease property to its original condition at the time of handing over vacant and peaceful possession of the same…"*. Upon perusal of the said prayer, it is evident that the plaintiff is in recognition of the fact that the possession of subject premises cannot be recovered without restoring it to its original condition i.e., without having been separated from the existing old tenancy. It is important to note that the plaint otherwise is conspicuously silent as to how the subject premises has been altered and in what manner the restoration was sought. The plaintiff deliberately kept the situation vague.

23. It is submitted that the impugned judgment is based on a supposition wholly unknown to settled canons of law. Unmindful of the fact that it was passing a decree based on a purported admission, the learned Trial Court, *suo moto*, picked up a document (site plan) from the earlier suit, marked it as "annexure C1", employed the same as a proved exhibit and proceed to pass a decree in terms thereof. It is further submitted that the same is unprecedented and unsustainable as annexure C-1 finds no mention in the plaint and is a complete stranger to it. The plaint does not seek ejectment on the basis of this site plan. Reliance in this regard has been placed on ***Bachhaj Nahar v. Nilima Mandal***[3].

24. It is submitted that the learned Trial Court also erred in passing the impugned judgment as, admittedly, it has granted a decree for the portion, not subject matter of the suit, terming it as *remaining portion*. By doing

[3] **(2008) 17 SCC 491**

so, the learned Court below has assumed that if another premises adjoining to the suit premises belongs to the same owner/landlord, a decree could be passed for such adjoining premises in the same suit.

25. It is submitted that the learned Trial Court erroneously accepted a site plan (*annexure C1*) for measurements but discarded the fact that in the same plan, the premises is described as *E-22*. It is trite that a document, more so if considered as an admission should be accepted and read as a whole. To accept the site plan for measurement as an admission, but, contrary to the writing of the same very plan, adopting the same for another premises *(E-20)* is not in accordance with the law.

26. Therefore, in view of the foregoing submissions, it is prayed that the instant appeal may be allowed and the reliefs be granted as prayed for.

(on behalf of the respondent)

27. Learned counsel appearing on behalf of the respondent vehemently opposed the instant appeal submitting to the effect that the same is liable to be dismissed being devoid of any merits.

28. It is submitted that the learned Trial Court did not commit any error in passing the impugned judgment as the same is based on clear and unequivocal admissions made on part of the appellant/defendant.

29. It is submitted that the appellant had made unequivocal admissions with respect to the status of late Sh. YN Gupta as the landlord of the suit property, identity of the suit property, appellant's tenancy and occupation of the suit property, the fact that rate of rent of the suit property exceeded Rs. 3,500/- and the fact that the tenancy of the appellant in the suit property was terminated by way of a notice.

30. It is submitted that the main objection of the appellant is that suit

property is not the rear/back portion of E-20, Connaught Place, New Delhi but a part of E-22, Connaught Place, New Delhi. In this regard, it is submitted that the suit property was identified by the plaintiff/respondent herein as the *"back portion of the main shop at the premises bearing No. E-20, Connaught Place, New Delhi – 110001, comprising of a store and a mezzanine thereon.*

31. It is submitted that the appellant did not dispute the identity of the suit property as it did not deny the site plan annexed by the plaintiff with the present suit wherein the suit property has been identified in 'red' colour and in fact had admitted that the same was the site plan that was filed by the appellant herein itself in the earlier suit between the parties i.e., CS No. 49/2013. It is further submitted that it is evident that the identity of the suit property was not in dispute in the suit. At best, with a view to create the illusion of a defence, what was disputed by the appellant was the property number by which the suit property is referred to.

32. It is submitted that the appellant has contended that in paragraph no. 3 of the 'preliminary objections' of its amended written statement, it stated that the suit was silent *qua* the area from which the eviction was sought and no replication *qua* the same was filed by the plaintiff. With regard to the same, it is submitted that this contention is incorrect for the reason that the said 'preliminary objection' was taken by the appellant herein in paragraph no. 6 of the 'preliminary objections' of its original written statement and the same was duly responded to by the plaintiff in their replication. Further, vide order dated 23rd March, 2023, the plaintiff's original replication was treated as the replication to the

amended written statement.

33. It is submitted that aappellant has further contended that the learned Trial Court erred in decreeing the suit in respect of an area which is more than the area shown in the site plan relied upon by the plaintiff. It is submitted that the learned Trial Court has passed a decree of possession in respect of the portion shown in 'green' colour in the site plan filed by the appellant itself in the earlier suit between the parties (CS No. 49/2013) and thus, now the appellant cannot be permitted to dispute a document that it has itself got prepared, filed and relied upon.

34. It is submitted that the appellant has unambiguously and unequivocally admitted that late Sh. Y.N. Gupta was its landlord in respect of the suit property. It is submitted that the appellant has, for many decades, accepted late Sh. Y.N. Gupta as the landlord of the suit property by tendering rent to him. Reliance in this regard has been placed on ***MEC India Pvt. Ltd. v. Lt. Col. Inder Marla & Ors.***[4], ***Tej Bhan Madan v. II Additional District Judge & Ors***[5] ***and Shri Sanjeev Gupta v. Shri Kul Bhushan Malik***[6].

35. It is submitted that as per Section 106 of the Transfer of Property Act, 1882, a lease is terminable on the part of either the "lessor" or the "lessee". In this regard, it is important to note that the word used in Section 106 of the Transfer of Property Act, 1882 is "lessor" and not "owner" and in the present case, late Sh. Y.N. Gupta was admittedly the lessor/landlord of the appellant herein *qua* the suit property. Further, even if it is assumed, for the sake of argument, that the notice of termination

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[4] (1999) 80 DLT 679
[5] (1988) 3 SCC 137
[6] (2016) SCC Online Del 5243

dated 4th October, 2013 is *non-est* and invalid, even then, in light of the settled law, the present suit for possession/ejectment cannot be defeated merely on the ground that there was no valid termination of tenancy prior to filing of the suit. Reliance in this regard has been placed on ***Nitin Jain v. Geeta Raheja***[7].

36. It is submitted on that the learned Trial Court has rightly passed a decree of possession in respect of "back portion of main shop at E-20, Connaught Place, New Delhi as shown in green colour in the site plan annexure C1.

37. It is submitted that the site plan referred to by the learned Trial Court is the one (1) of the three (3) site plans filed by the appellant in the earlier suit between the parties i.e. CS No. 149/2010. The said site plan was a part of the record before the learned Trial Court on account of the fact that vide order dated 18th January, 2018, based on the submissions of both the parties, the entire case file of CS No. 149/2010 was summoned from the record room of Tis Hazari Court.

38. Therefore, in view of the foregoing submissions, it is prayed that the instant appeal may be dismissed.

SCHEME OF THE PROVISION

(Order XII Rule 6 of the CPC)

39. Before proceeding to test the legality of the impugned judgment, it would be prudent to refer to the nature, scope and object of the law settled by the Hon'ble Supreme Court with regard to Order XII Rule 6 of the CPC. In order to understand the basics, the relevant provision of law under which the application filed by the respondent/plaintiff was allowed

[7] **2015 SCC OnLine Del 13058**

by the learned Trial Court and is under challenge before this Court, is reproduced herein:

> "..***ORDER XII - Admissions***
> ***[6. Judgment on admissions.—*** *(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*
> *(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.]*.."

40. Upon perusal of the abovementioned provision, it is made out that Order XII Rule 6 of the CPC governs judgments on admission verbatim and the Courts have the power to pass a judgment in regard to any oral or written submission made by the parties at any stage of the proceedings and such admission may be made in the pleading or otherwise.

41. The aforesaid provision contemplates that in case of a clear admission by which the Court cannot even entertain the possibility of a different view, a judgment on admission may be passed without conducting a trial. Further, the said provision prescribes that any fact which has been admitted during the hearing, or in writing in the pleadings, would not be required to be proved by way of a trial.

42. Although the said provision is an enabling provision, thus, neither mandatory nor pre-emptory, however, the same is a discretionary power, and the Court shall exercise such discretionary power after thorough

examination of all the facts and circumstances by applying judicial mind and bearing in mind that a judgment on admission is a judgment without trial. The aforesaid discussion on the scope of Order XII Rule 6 of the CPC has also been enunciated by the Hon'ble Supreme Court in the judgment passed in ***Balraj Taneja v. Sunil Madan***[8], relevant paragraphs of which are as under:

> "*...**23.** Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.*
> ***
> ***
> ***29.** As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself*

[8] **(1999) 8 SCC 396**

> *indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression "the court may, in its discretion, require any such fact to be proved" used in sub-rule (2) of Rule 5 of Order 8, or the expression "may make such order in relation to the suit as it thinks fit" used in Rule 10 of Order 8….*"

43. Another essential which the Courts must take into account while adjudicating an application under Order XII Rule 6 of the CPC is that the Courts are mandated to only pass a judgment under the said provision if there is a clear admission and in the event the deemed admission is not clear and unequivocal, and it requires the Court to resort to the process of interpretative determination, the same would be against the mandate of law as it is not proper for the Court to pass a judgment on inference. The same was also observed by the Division Bench of the Bombay High Court in ***Shantez v. Applause Bhansali Films Pvt. Ltd. Company***[9], relevant paragraphs of which are as under:

> "*..**4.** The learned Counsel further relied upon the judgment in the case of Uttam Singh Dugal and Co. Ltd. v. Union Bank of India, (2000) 7 SCC 120 : AIR 2000 SC 2740 to buttress his submission that a decree on admission as contemplated under Order XII Rule 6 of the Code is wide enough to include an admission of fact in the pleadings or otherwise whether orally or in writing. On the basis of any of this, the Court could pass a decree on admission. The provision is capable of wide construction but it has to be applied in strict sense i.e. the ingredients specified under this*

[9] **2009 SCC OnLine Bom 405**

provision must be satisfied before a decree can be claimed by the Applicant under this provision. The admission made may be in the pleadings or otherwise which would include documents or any other material which is on the Court file but it must be unambiguous and definite admission. It is not proper for the Court to pass a decree on inference. In fact, in absence of an unambiguous and definite admission of liability and quantum, it would be difficult for the Court to pass a decree on such basis. It will be useful to make a reference to the case of Raj Kumar Chawla v. Lucas Indian Services, 2006 (129) Delhi Law Times 755 where the Court discussed the intent and scope of the term "admission" as contemplated under Order XII, Rule 6 of the Code, held as under:—

> *"5. The provisions of Order XII are intended to provide expeditious grant of decree in favour of a plaintiff in a suit or proceedings where the defendant has made any admission in the pleadings or otherwise, orally or in writing of any amount due. The plaintiff would be entitled to a decree on the basis of such admission without waiting for completion of the trial. The provisions of Order XII, Rule 6 were incorporated by way of amendment. The legislative object of these provisions is to curtail the period for determination of disputes between the parties to a suit and ensure that a decree on admission is passed without any unnecessary hindrance. The expression 'Admission' has been given a wider meaning and connotation so as to take within its ambit admissions made by a party in pleadings or otherwise, orally or in writing. These provisions thus are capable of liberal construction and without imposition of any unreasonable restriction, must be permitted to operate but the Courts have to be careful while passing a decree on admission. The Court essentially should look into the fact that all essential ingredients of an admission are satisfied before such a decree is passed in favour of any of the parties to the suit. Admission has to be unambiguous, clear and unconditional and the law would not permit admission by*

inference as it is a matter of fact. Admission of a fact has to be clear from the record itself and cannot be left to the interpretative determination by the Court, unless there was a complete trial and such finding could be on the basis of cogent and appropriate evidence on record. Rule 6 of Order XII certainly enables a party to obtain a speedy judgment fully or partially to which according to the admission of the defendant the plaintiff is entitled to. In the case of the Uttam Singh Duggal and Co. v. Union Bank of India, (2000) 7 SCC 120 : AIR 2000 SC 2740 the Court while explaining the scope and ambit of these provisions held as under:

> *"Learned counsel for the appellant contended that Order XII, Rule 6 comes under the heading 'admissions' and a judgment on admission could be given only after the opportunity to the other side to explain the admission, if any, made; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission, that even though, the provision reads that the Court may at any stage of the suit make such order as it thinks fit effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII, Rule 5(1) of Civil Procedure Code and Court need not necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently, that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression 'admissions' made in the course of the pleadings or otherwise will have to be read together and the expression 'otherwise' will have to be interpreted ejusdem generis.*

As to the object of the Order XII, Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that 'where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.

The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission

is made is in dispute. and the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

6. The powers under Order XII, Rule 6 of the Code has to be exercised judicially on the facts and circumstances of each case. The admission on the basis of which the Court wishes to pass a decree has to be unambiguous, clear and unconditional. There is no doubt that in a suit there can be more than one decree passed at different stages and each decree being separate and independent is enforceable in accordance with law, was the principle stated by (1970) 3 SCC 124 : AIR 1971 SC 1081Chanchal v. Jalaluddin. Admission understood in its common parlance still must be a specific admission. There is very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission on the part of a party to the suit. The Court has to consider the need for passing a decree on admission under these provisions only in the cases of first category and normally should decline in the cases of the later category.

7. The term 'Admission' in section 70 of the Evidence Act relates only to admission of a party in the course of the trial of the suit and not to the attestation of a document by the party executing it. The essential feature of admission is that it should be 'Concise and deliberate act'. It must not be something which was not intended and was not the intention of the party. Pre-requisite to admission are unconditional, unambiguous and intend the same to be read and construed as admission. The scope of admission of a claim is also explained under Order DC, Rule 8 of the Code of Civil Procedure, which contemplates that there must be a claim as laid down in the plaint which is admitted, for the ground stated therein and not simply an admission of cause of action. The legislative intent is clear from

the provisions of the Code that an admission has to be unambiguous and clear. The Black's Law Dictionary explain the word 'Admission' as follows:

"admission: Any statement or assertion made by a party to a case and offered against that party; an acknowledgment that facts are true. Admission against interest. A person's statement acknowledging a fact that is harmful to the person's position as a litigant. An admission against interest must be made either by a litigant or by one in privily with or occupying the same legal position as the litigant".

8. It is also a settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather is a matter of discretion of a Court. Where the defendant has raised objection which will go to the very root of the case, it would not be appropriate to exercise this discretion. The use of the words 'May' and 'make such orders' or 'give such judgment' spells out that power under these rules are discretionary and use of discretion would have to be controlled in accordance with the known judicial cannons. The cases which involves questions to be decided upon regular trial and the alleged admissions are not clear and specific, it may not be appropriate to take recourse to these provisions. In the case of Pariwar Sewa Sansthan v. Dr. (Mrs.) Veena Kalra, AIR 2000 Delhi 349 the Court examined at length the provisions and the need for an admission to be unequivocal and positive. The admission would obviously have the consequences of arriving at that conclusion without determination of any question and evidence. The Court while relying upon the case of Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396 : AIR 1999 SC 3381 and Dudh Nath Pandey v. Suresh Chandra Bhattasali, (1986) 3 SCC 360 : AIR 1986 SC 1509 held as under:

"In Razia Begum v. Sahebzadi Anwar Begum it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8 that is to say, notwithstanding the admission made by the defendant

in his pleading, the Court may still require the plaintiff to prove the facts pleaded by him in the plaint.

Thus, in spite of admission of a fact having been made by a party to the suit, the Court may still require the plaintiff to prove the fact which has been admitted by the defendant.

At this stage it would be useful to recall some factual contentions emerging from the pleadings: In 1995 the appellant/defendant was asked to vacate and hand over possession of the suit premises, on the ground of the violation of the terms of the lease; On 25th May, 1996 a notice was alleged to have been served upon the defendant, requiring it to vacate the premises, on 12th September, 1996, tenancy is alleged to have expired by efflux of time and on 8th September, 1996, telegraphic notices were also alleged to have been served upon the defendant. The defendant had pleaded that they were the contractual tenants in respect of the basement since 12-9-1990 and in respect of ground floor since 29-11 -1985; that the lease deeds dated 12-5-1994 were never acted upon and were sham documents; two tenancies existed in respect of the ground floor and two tenancies existed in respect of the basement and plaintiff Nos. 1 and 2 used to get separate cheques in their individual names, in respect of each of these portions. In fact, the plaintiffs did not deny the fact that they had been receiving the rent separately in their respective names, with regard to the ground floor and basement tenancies. However, it was pleaded that in 1995, the defendants started issuing two separate cheques in the name of each of the plaintiffs for their convenience. On the basis of these pleadings trial Court, inter alia, framed specific issues that whether the defendant is a contractual tenant or not and whether the lease was validly terminated or was terminated by efflux of time?

The question whether defendant became contractual tenant after 1995, when they were called upon to vacate the premises on the ground of alleged violation of the

terms of the lease, and effect of the circumstances leading to the acceptance of the rent by the two plaintiffs individually in their respective names would require trial. These questions could not be determined without evidence and, therefore, it cannot be said to be a case of "unequivocal" and clear positive admission, which is an essential requirement of law for a decree on admission. Learned trial Court instead of concentrating on the question that whether there was any admission on the part of the defendant or not in its pleadings or elsewhere, proceeded to adjudicate upon some of the issues on merits by observing that the pleas raised by defendant are unbelievable, which could not have been done. There being triable issues raised going to the root of the case, the trial Court ought to have proceeded to try the suits and returned findings on merits. The impugned judgment and decrees are thus liable to be set aside and the suits deserve to be remanded for trial in accordance with law".

5. *It will be further useful to make a reference to a judgment of this Court in Western Coalfields Ltd. v. Swati Industries, 2004 (1) Bom. C.R. 322 where the Court took the view that admission made by the parties has to be absolute and unconditional and where in the written statement it had been specifically stated that in terms of another contract, the said amount had already been appropriated. This is not an unqualified admission on part of defendant which would invite a decree against it for the said amount. Nature of admission is neither conclusive to invite order under Order 12, Rule 6 of Civil Procedure Code nor would operate as estoppel against defendant under section 115 of Evidence Act. The provision of Order XII, Rule 6 of the Code contemplates an admission of fact and such admission could not be inferred.*

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7. *In the same Notice of Motion No. 2561 of 2007, the Applicants had also claimed certain interim orders while titling the application as for decree on admission. It is a settled principle of law that the Order XII, Rule 6 of the*

Code cannot be used where vexed and complicated questions or issues of law arise and it does not contemplate passing of interim orders. Reference in that regard can be made to the case of Manisha Commercial Ltd. v. N.R. Dongre, AIR 2000 Delhi 176 as well as to a judgment in the case of Gorivelli Appanna v. Gorivelli Seethamma, AIR 1972 A.P. 62.

8. *In light of this position of law and nature of the documents referred to by the appellants, we have no hesitation in holding that it was not a case for passing a decree on admission…*"

44. It is settled that Order XII Rule 6 of the CPC has been couched in a wide language, however, before a Court can act under Rule the same, the admission must be clear, unambiguous, unconditional and unequivocal.

45. The Court must bear in mind that a judgment on admission by the defendant under Order XII Rule 6 of the CPC is not a matter of right rather the same is a matter of discretion of the Court; no doubt such discretion has to be exercised judicially and on the basis of the facts of the case at hand.

46. It is peculiar to note that where the defendants have raised objections which go to the very root of the case and where vexed and complicated questions or issues of law arise, it would not be proper to exercise this discretion and pass a decree in favor of the plaintiff.

47. Summarily stated, as per the settled position of law, only upon being satisfied that there is no fact which is needed to be proved on account of alleged admissions, the Court can pass a judgment, however, if the plaint and the written statement itself indicates that there are disputed questions of fact involved in the case regarding which two different

versions are set out, the Court is required to ascertain the facts to settle the factual controversy.

48. Further, it is also imperative to mention that in the process of arriving at a finding if there is an admission or not, the Court *must not resort to interpreting* the averments made in the plaint, application under Order XII Rule 6 of the CPC and the written statement. The same is based on the principle that admissions must be clear, unambiguous and unequivocal, and following any other standard is against the settled law.

ANALYSIS AND FINDINGS

49. Heard the learned counsel appearing on behalf of the parties and perused the material available on record including the judgments relied upon by the parties.

50. The appeal is admitted.

51. It is the case of the appellant that the impugned judgment is flawed and liable to be set aside as it fails to consider the complete facts and circumstances of the case. Learned senior counsel argued that the learned Trial Court did not adhere to the settled legal position regarding Order XII Rule 6 of the CPC, which requires clear, unambiguous, and unequivocal admissions to pass a judgment on admission. In this case, there are no such clear admissions, and the learned Trial Court overlooked the appellant's strong defenses and objections presented in their written statement and reply to the application under Order XII Rule 6 CPC.

52. The appellant’s amended written statement explicitly disputes the contentions of the plaint, specifically stating that the subject property is incorrectly described as 'back portion of E-20' when it is actually part of

'property bearing no. E-22'. The learned Trial Court also failed to consider a compromise decree dated 2nd November, 1964, which indicated that the property E-22, then tenanted by Sh. Gulzari Lal, fell into the share of Sh. Sanjay Gupta, making late Sh. YN Gupta incompetent to terminate the tenancy or institute the suit.

53. The appellant further argued that the tenancy termination was disputed due to incorrect premises and the termination by an incompetent person. It was also pleaded that the property was let out in the year 1980 with an understanding that the tenancies of E-20 and E-22 could be merged for the appellant's use. This involved permission to remove the intervening wall and create access between the properties. The appellant contended that the plaintiff cannot seek eviction from E-22 without also addressing the existing tenancy of E-20, which is protected under the Delhi Rent Control Act, 1958.

54. Further, the appellant asserted that there was a supplemental agreement clarifying that the premises let out in the year 1980 was part of E-22, not E-20. The impugned judgment did not consider the appellant's substantial defenses, including the understanding of the merger of the two premises and the prohibition on the plaintiff seeking eviction post-merger. These facts required a trial for proper establishment, which the learned Trial Court ignored.

55. Additionally, the appellant pointed out that the plaintiff's prayer for mandatory injunction to restore the lease property to its original condition acknowledges the interdependence of the premises. However, the plaintiff's plaint remains vague about how the premises were altered and the specifics of the restoration sought.

56. Moreover, the learned Trial Court erred in passing the impugned judgment by relying on a document (site plan) from an earlier suit, which was not mentioned in the plaint and was used without proper basis. The learned Trial Court also erred for including a portion not subject to the suit, assuming that adjoining premises could be decreed in the same suit. Moreover, the acceptance of the site plan for measurements but not for the correct premises description was argued stating that the same is inconsistent and contrary to legal principles. Therefore, the appellant prays that the appeal be allowed and the reliefs sought be granted.

57. In rival submissions, the respondent has refuted the submissions made on behalf of the appellant and submitted that the learned Trial Court's judgment was correctly based on clear and unequivocal admissions by the appellant. These admissions include acknowledging late Sh. YN Gupta as the landlord, recognizing the identity of the suit property, the appellant's tenancy and occupation of the property, the rent exceeding Rs. 3,500/-, and the termination of the tenancy through a notice.

58. In the instant appeal, the primary objection raised by the appellant regarding the suit property being part of E-22 instead of the rear/back portion of E-20 was addressed by the respondent by asserting that the suit property was clearly identified by the plaintiff as the “back portion of the main shop at E-20, Connaught Place,” and this identification was not disputed by the appellant. The site plan annexed with the suit, which was not denied by the appellant, showed the suit property in ‘red’ color, consistent with the site plan filed by the appellant in an earlier suit (CS No. 49/2013). Thus, the respondent argued that the identity of the suit

property was not in dispute, and the appellant's objection about the property number was merely an attempt to create a false defense. Regarding the appellant's contention that the suit did not specify the area for eviction, the respondent submitted that this objection was raised in the original written statement and was duly addressed in the plaintiff's replication. The learned Court below treated the original replication as the response to the amended written statement, resolving this issue.

59. The respondent also addressed the appellant's argument about the area shown in the site plan submitting to the effect that the learned Trial Court decreed possession for the portion shown in ‘green’ color in the site plan from the earlier suit (CS No. 49/2013), prepared and relied upon by the appellant. Therefore, the appellant could not dispute this document at this stage.

60. Furthermore, the respondent contended that the appellant had consistently recognized late Sh. YN Gupta as its landlord by paying rent to him for decades. According to Section 106 of the Transfer of Property Act, 1882, a lease is terminable by either the "lessor" or the "lessee," and Sh. YN Gupta was the lessor. Even if the termination notice was deemed invalid, the suit for possession could not be defeated on this ground alone. Moreover, it is submitted that the learned Trial Court's decree of possession for the "back portion of the main shop at E-20, Connaught Place," as shown in the 'green' color in the site plan (annexure C1) is correct and there is no illegality of any kind thereto. It has been submitted that the site plan used by the learned Trial Court was one of three site plans filed by the appellant in the earlier suit (CS No. 149/2010). This plan was part of the Court record, as the entire case file of CS No.

149/2010 was summoned based on submissions from both parties. In conclusion, the respondent prayed that the appeal be dismissed in light of their arguments.

61. At this stage, this Court finds it imperative to peruse the impugned judgment, relevant portion of which is as under:

> "*..6. Arguments have been advanced on behalf of the plaintiff by Sh. Rajat Aneja, Ld. Advocate. It has been vehemently argued on behalf of the plaintiff that the challenge to the ownership of Late Sh. Y.N. Gupta qua the suit property is not sustainable for following reasons :*
> *(a) That the landlord-tenant relationship between Late Sh. Y.N Gupta and the defendant is admitted. It is also acknowledged by various communications and issuance of cheques towards rent in favour of Late Sh. Y.N. Gupta. Even otherwise, in view of Section 116 of The Indian Evidence Act, 1872 (herein after referred to as* ***'The IEA'), the objection is fu tile. Reliance has been placed upon Sky Land International Pvt. Ltd. Vs. Kavita P Lalwani 191 (2012) DLT 594****.*
> *(b) That the objection lost all relevance as during trial, Late Sh. Y.N. Gupta expired and Sh. Sanjay Gupta (whose ownership qua the suit property is admitted by the defendant) alongwith other LRs of Late Sh. Y.N. Gupta came to be impleaded in the present suit.*
> *7. As regards, the number of the suit property being disputed, it has been argued that identity of the suit property is clear to both the parties and the suit property is also identifiable as per the site plan filed by the defendant in Civil Suit no. 149/10. Also, by referring to reply dated 10.10.20 13 to termination notice, it has been submitted that even therein, the suit property was clearly identified. Further, placing reliance upon* ***Sky Land International Pvt. Ltd. Vs. Kavita P Lalwani (Supra)*** *it has been submitted that even the filing of the present suit was a due compliance of notifying termination.*
> *8. The defence of combined user of separate tenancies is*

refuted as being contrary to the defence in Civil Suit no. 149/10 and frivolous in nature to defeat the rights of the plaintiff and insufficient to urge applicability of The DRC Act to the suit property.

9. In rebuttal, by referring to paragraph no. 3 and 5 of preliminary objections of written statement, it is submitted that the identity of the suit property is disputed and the Lease Deed dated 20.03.1980 cannot be looked into even for collateral purposes by virtue of Section 33 r/w Section 35 of The Indian Stamp Act, 1899 (hereinafter, referred to as 'The Stamp Act'). Also, by referring to the dispute in the size or the suit property, it is sought to be shown that decree, at this stage, cannot be passed. Also, reliance is placed upon a mutual agreement whereby the suit property is acknowledged to be a part of E-22, Connaught place and erroneously mentioned as rear portion of E-22 Connaught Place, New Delhi in the Lease Deed. To establish that the suit property is part of E-22 Connaught Place, New Delhi , the Court has also been led through documents pertaining to the partition or properties in the family of Sh. Y.N. Gupta namely (i) report of Ld. Local Commissioner dated 31.10.1964 (ii) Schedule "A" (iii) Schedule "B" (iv) Schedule " C" (v) Schedule "D" (vi) Schedule "E" (vii) Schedule "F" and (viii) Receipt dated 20.03.1980 to elucidate that the suit property has been given a wrong nomenclature in the present suit.

10. Qua termination of tenancy, it has been argued that the termination notice dated 15.07.20 13 has not been issued by the owner of the suit property and is also not directed towards property no. E-22, Connaught Place, New Delhi and as such, there has been no valid termination. Placing reliance upon Section 7 of The Transfer of Property Act (herein after, referred to at 'T.P.A.'), it is argued that mere collection of rent did not make Sh. Y.N. Gupta, landlord of the suit property.

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12. The Court has considered the submissions and material on record.

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15. Thus, at this stage of deciding application under Order XII Rule 6 of CPC in a suit for ejectment brought by the landlord against the tenant, it is to be seen whether there is an unequivocal admission of the following facts and circumstances :

(a) There exists a relationship of landlord and tenant between the parties ;

(b) Notice of termination was duly served ;

(c) That the rate_ of rent of the suit premises exceeds Rs.3500/- per month when notice u/s 106 of T.P.A. is served.

ON LANDLORD-TENANT RELATIONSHIP :

16. As regards, the first requirement of landlord-tenant relationship, the defendant has put up a defence questioning the title of Late Sh. Y.N. Gupta qua the suit property.

17. Here it would be relevant to refer to the Rule of Estoppel between a landlord and tenant as enshrined in Section 116 of the Indian Evidence Act, 1872 (hereinafter referred to as 'I.E A. ') which stipulates as under :

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19. *In this context, it also would be beneficial to refer to the pleadings of the present suit and the documents. In the amended written statement in reply on merits, paragraph no. 1 speaks loud and clear about the unequivocal admission that the plaintiff is the landlord of the defendant qua the suit premises. This is also corroborated by reply dated 03.08.2013 to legal notice dated 15.07.2013 sent on behalf or Late Sh. Y.N. Gupta to the defendant for enhancement of rent. By way of the reply, the defendant remitted cheques for the rent for the period commencing from 20.05.2013 to 19.09.2013 in the name of Sh. Y.N. Gupta. Yet again, in response to termination notice dated 04.10.2013, reply dated 10.10.2013 from Sh. Mayank Jain, partner in the defendant, another cheque no. 690763 dated 10.10.2013 on behalf of the defendant, towards the rent was issued only in the name of Late Sh. Y.N. Gupta with respect to the suit property.*

20. Additionally, even Sh. Sanjay Gupta who is stated to be the owner of the suit property, eventually, on death of Late Sh. Y.N. Gupta has now been impleaded in the present suit. Therefore, the objection has lost all its relevance.

21. Thus, the landlord-tenant relationship between the parties has been established.

VALID TERMINATION OF LEASE

22. The defendants have challenged the claim of valid termination of lease challenging the ownership of Sh. Y.N. Gupta qua the suit property, size of the suit property as well as the number of the suit property. However, the service of notice dated 04. 10.2013 has not been denied.

23. As regards, the challenge to the legal notice for termination dated 04.10.2013 on the ground that Late Sh. Y .N. Gupta not being the owner of the suit premises, could not terminate the lease, in view of the observations above, is of no consequence.

24. However, the question which now arises is qua identity of the suit property. Whereas, the plaintiff has defined the suit property as "back portion of the main shop at the premises bearing E-20, Connaught Place, New Delhi - 110001, comprising of a store and mezzanine thereon .. . ", the defendant has claimed that the suit property is not a part of E-20, Connaught Place but of E-22, Connaught Place but admits that it was wrongly recorded so in the Lease Deed dated 20.03.1980.

25. The plaintiff also relied upon certified copy of site plan which is annexed with Lease Deed dated 20.03.1980 fi led by the defendant in the Civil Suit no. 149/10 for identification of the suit property. Even during the course of arguments, much emphasis on the same has been laid.

26. However, admittedly, Lease Deed dated 20.03 .1980 is unregistered and not duly stamped. As per clause (1) of the lease deed, the site plan formed part of the lease deed for identification of the leased premises. Though, it as been argued on behalf of the plaintiff that the lease deed can be looked into for collateral purposes despite being unregistered, the application of Section 35 of The Stamp Act

which creates absolute bar for reliance on the document has not been addressed. Therefore, it would not be appropriate for this Court to rely upon aforementioned site plan. No further, steps have been taken by the plaintiff to counter this objection. However, what is bearing upon the mind of this Court is whether a trial on this aspect of ascertaining the exact number of the suit premises is warranted especially when, the suit property is clearly identifiable by the parties inter se.

27. Hence, this Court deems it appropriate to sieve through the records for availability of other material which can resolve the issue. While doing so, the Court is conscious that admissions under Order XTI Rule 6 of CPC can fall under "admissions off act ... made either in the pleading or otherwise." Reliance is placed upon ***Umang Puri Vs. Pramod Chandra Puri in CS (OS) No.169512006 decided on 1.3.04.2009*** *decided by Delhi High Court wherein it has been held as under…*

28. *Now, the relevant portion of the amended written statement is as under:*

"For all purposes and record, the two premises being E-20, Connaught Place, New Delhi and E-22 Connaught Place, New Delhi were being separa1ely assessed and were in 1he occupation of different tenants. E-20, Connaught Place, New Delhi comprising of front shop, ground floor and the front mezzanine was in the tenancy of late Shri Attar Chand Jain, Sole Proprietors and affirmed then partner of Mis. Greenways and the rear portion was in tenancy of one Shri Gulzari Lal who was running the business of a restaurant and had connected the rear mezzanine from the side and rear access and the Gali with properly No. E-22, Connaught Place, New Delhi and therefore this property although appearing to be a part of property No. E-20. Connaught Place. New Delhi stood segregated and merged with E-22. Connaught Place. New Delhi and at the time of partitioning the property this entire property being E-22. Connaught Place. New Delhi fell 10 the share of Shri Sanjav Gupta, the son of Plaintiff while the portion in occupation of late Shri

Attar Chand Jain being now termed as Greenways fell to the share of the present Plaintiff. The decree became final and absolute. This fact is known to the present Plaintiff who is concealing the fact because of wrong nomenclature appearing in the Lease Deed and is persisting in the mistake uptill now. The Defendants maintain that the present suit being being not in respect of premises E- 22, Connaught Place, New Delhi is not competent and should be dismissed. "

29. Again, m paragraph no.1 of reply on merits it is stated as under:

"It is admitted that in the year 1980, what was let out to the defendant was a store and portion of the Mezzanine Floor at a monthly rent of Rs.20,000/- as staled. It is stated that the said portion though has been identified in the lease deed dated 20.3. 1980 as rear portion of premises No. E-20. Connaugh1 Place. New Delhi but by a Supplementary Agreement executed on the same day the error was removed and the property was rightly shown as portion of E-22. Connaught Place. New Delhi. "

30. Further, in paragraph no. 9 of reply on merits it stated as under:

"That in reply to para 9, it is submitted but the so called portion ..... with the property No E-22. Connaught Place. New Delhi of which the present Plaintiff was not the Owner .... "

31. In Civil Suit No. 149/10, the defendant also filed three site plans in addition to the site plan which is part of the unregistered Lease Deed dated 20.03.1980. The third site plan is of premises no. E-20 and E-22 at Connaught Place, New Delhi and the tenanted portion of E-22 Connaught Place, New Delhi is shown in green colour (the same is marked as annexure C1 for convenience, today). Therefore, the defendant is cognizant of the identity of the suit property and it is also clearly established by site plan annexure C1. Thus, the Court cannot play into the hands of the defendant allowing a protracted trial on the basis of a farcical

confusion.

32. Another argument has also been qua the measurement of the suit property. In preliminary objections of amended written statement, it has been sought to be shown that the previous eviction suit bearing no. 149/10 sought eviction of the defendant from an area of 174 Sq. ft. on the ground floor and 324 sq. ft. on the mezzanine floor but it has not been mentioned in the present plaint whereas, factually , the ground floor admeasures 150 sq. ft and the mezzanine floor admeasures 290 Sq. fts. However, perusal of the plaint of Suit no. 149/10 docs not reveal any such assertion and it only finds mention in paragraph no.4 of the affidavit of Sh. Mayank Jain which was exhibited as Ex. DW1/A, therein. This assertion in the affidavit is beyond the contents of the written statement, therein. Even otherwise, as the remaining portion of the leased properties continues to belong to the same landlord and now his legal heirs, this defence also, is moonshine.

33. ·The defendant also has pleaded merger of "user" of two distinct and separate tenancies to run its business and also stated that the plaintiff cannot now pick and choose to evict the defendant from subsequent tenancy so as to cripple the business or the defendant. The written statement in Civil Suit no. 149/10 is replete with various instances that the previous suit was bad for mis joinder of causes of action as the two tenancies were separate and distinct leading to the withdrawal of the suit. Therefore, estoppel will apply upon the defendant who now seeks to plead the contrary and defeat the right of the plaintiff.

***34.** Admittedly, there are two separate and distinct tenancies qua the suit property and front portion of E-20, Connaught Place, respectively, of which the later is covered by Delhi Rent Control Act and well within the knowledge of the defendant. Therefore, the defendant is well aware of the tenancy qua which the termination notice dated 04.10.2013 has been issued. He has also entered this litigation conscious of which tenancy he seeks to defend. Once again, it would be travesty of justice to accept the defence that for*

want of proper nomenclature of the property though, admitting the identity of the property, the notice for termination has not been validly served.

35. Hence, even this ingredient stands satisfied on the basis of material on record.

APPLICABILITY OF RENT CONTROL ACT :

36. Pursuant to letter dated 15.07.201 3, the rent of the suit premises was offered to be affixed at 3,542/- w.e.f. 20.08.2013. In response thereto, vide letter dated 08 .08.2013 w e.f. 20.08.2013, the defendant agreed to pay rent @ Rs. 3,542/- and also paid the said through cheque no. 69075 I dated 02.08.2013 to Late Sh. Y.N. Gupta. There is no pleading qua applicability of Delhi Rent Control Act. Therefore, the issue is not triable.

FINDING

37. In view of the above discussion, the application under order XII Rule 6 of CPC is allowed. Decree for ejectment of the defendant back portion of main shop at E-20, Connaught Place, New Delhi and as shown in green colour in the site plan annexure C1.

38. Decree sheet be prepared, accordingly.

39. Be listed for further proceedings qua prayer clause no. (B)…"

62. Upon perusal of above extracts of the impugned judgment, it is made out that the plaintiff/respondent herein contended that the defendant's/appellant herein challenge to the ownership of late Sh. Y.N. Gupta concerning the suit property is untenable. It was argued that the landlord-tenant relationship between late Sh. Y.N. Gupta and the defendant is undisputed, as evidenced by various communications and rent payments made to late Sh. Y.N. Gupta. Furthermore, under Section 116 of the Indian Evidence Act, 1872, the objection is deemed futile. Reliance was placed on the case of ***Sky Land International Pvt. Ltd. v.***

Kavita P Lalwani[10]. The plaintiff also asserted that the objection lost its relevance as, during the trial, late Sh. Y.N. Gupta passed away, and Sh. Sanjay Gupta, whose ownership of the suit property is acknowledged by the defendant, along with other legal representatives of Late Sh. Y.N. Gupta, were impleaded in the present suit.

63. Regarding the dispute over the suit property's number, it was argued that both parties are clear about the property's identity, and it is identifiable as per the site plan filed by the defendant in Civil Suit No. 149/10. The plaintiff submitted that even in the reply dated 10th October, 2013 to the termination notice, the suit property was clearly identified, and compliance with notifying termination was duly observed, as per ***Sky Land International Pvt. Ltd. v. Kavita P Lalwani (Supra)***.

64. The defence of combined use of separate tenancies was refuted by the plaintiff as being contradictory to the defence in Civil Suit No. 149/10 and frivolous, intending to defeat the plaintiff's rights and insufficient to urge the applicability of the Delhi Rent Control Act, 1958 to the suit property.

65. In rebuttal, the defendant/appellant herein referred to paragraph nos. 3 and 5 of the preliminary objections in the written statement, disputing the suit property's identity and arguing that the lease deed dated 20th March, 1980 could not be considered, even for collateral purposes, under Section 33 read with Section 35 of the Indian Stamp Act, 1899.

66. The defendant also highlighted the discrepancy in the suit property's size, asserting that a decree at this stage could not be passed. The defendant relied on a mutual agreement indicating that the suit

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property was part of E-22, Connaught Place, erroneously mentioned as the rear portion of E-22 Connaught Place in the lease deed. Documents related to the partition of properties in Late Sh. Y.N. Gupta's family were presented to support this claim.

67. The defendant further argued that the termination notice dated 15th July, 2013 was not issued by the owner of the suit property and was not directed toward property no. E-22, Connaught Place, New Delhi, thus invalidating the termination. Reliance was placed on Section 7 of the Transfer of Property Act, 1888 arguing that mere rent collection did not make late Sh. Y.N. Gupta the landlord of the suit property.

68. The learned Trial Court considered the submissions and material on record. It emphasized that, at this stage of deciding the application under Order XII Rule 6 of CPC in a suit for ejectment brought by the landlord against the tenant, it must be seen whether there is an unequivocal admission of the following facts: the existence of a landlord-tenant relationship between the parties, the duly served notice of termination, and the rent rate of the suit premises exceeding Rs. 3,500/- per month when notice under Section 106 of the Transfer of Property Act, 1888 was served.

69. Regarding the landlord-tenant relationship, the defendant questioned late Sh. Y.N. Gupta's title to the suit property. However, the rule of estoppel between a landlord and tenant under Section 116 of the Indian Evidence Act, 1872, was invoked. It was observed by the learned Trial Court that the amended written statement unequivocally admitted that the plaintiff is the landlord of the defendant concerning the suit premises, corroborated by the defendant's rent payments to late Sh. Y.N.

Gupta and the subsequent rent cheques issued after the termination notice. With Sh. Sanjay Gupta, now acknowledged as the owner of the suit property, being impleaded, the objection lost its relevance, establishing the landlord-tenant relationship in the opinion of the learned Court below.

70. The defendants challenged the valid termination of the lease, disputing Sh. Y.N. Gupta's ownership, the suit property's size, and its number. However, the service of the notice dated 4th October, 2013 was not denied. The learned Trial Court found the challenge to the termination notice on the ground that late Sh. Y.N. Gupta was not the owner to be of no consequence. The learned Trial Court then addressed the issue of the suit property's identity, noting the dispute over whether it was part of E-20 or E-22, Connaught Place, but finding the property identifiable by the parties. Although the lease deed dated 20th March, 1980 was unregistered and not duly stamped, rendering it inadmissible.

71. The learned Trial Court examined the amended written statement, noting admissions regarding the suit property's identity and the defendant's cognizance of the suit property, as established by the site plan file in the other civil suit. The learned Trial Court rejected the defendant's/appellant’s argument about the suit property's measurement, finding it unsubstantiated by the record and deeming the defence as untenable. Further, the defendant's plea of merging the use of two separate tenancies was also rejected, with the learned Trial Court applying estoppel due to the defendant's contradictory stance in civil suit No. 149/10. The learned Trial Court concluded that the defendant was

well aware of the tenancy in question and that the termination notice was validly served.

72. Regarding the applicability of the Delhi Rent Control Act, 1958, the learned Court noted that the rent was agreed to be Rs. 3,542/- per month as of 20th August, 2013, and there was no pleading about the Act's applicability, rendering the issue non-triable.

73. Based on the above observations made in the impugned judgment, the learned Trial Court allowed the application under Order XII Rule 6 of CPC, decreeing the ejectment of the defendant from the back portion of the main shop at E-20, Connaught Place, New Delhi, as shown in the site plan annexed as C1. The decree sheet was ordered to be prepared accordingly, with further proceedings scheduled for the remaining prayer clauses.

74. This Court has duly considered the contentions of the plaintiff/respondent made in the application filed under Order XII Rule 6 of the CPC and has also gone through the averments made in the amended written statement. Upon perusal of the same, it is observed by this Court that the impugned judgment of the learned Trial Court is flawed due to several critical errors in interpreting the written statement and the legal requirements for admissions under Order XII Rule 6 of CPC.

75. The learned Trial Court's determination of alleged admissions made by the defendant is based on an impermissible interpretation of the written statement, overlooking various denials and failing to adhere to the standard of clear and unequivocal admissions mandated by the Hon'ble

Supreme Court as well as this Court, as also discussed in the foregoing paragraphs.

76. It is noted that the appellant has consistently argued that the suit property is part of E-22, Connaught Place, and not the rear portion of E-20, Connaught Place. This dispute is crucial as it affects the entire basis of the suit for ejectment. The learned Trial Court, however, overlooked this significant defense and failed to appreciate that the appellant's written statement contained clear denials of the plaintiff's claims regarding the identity of the suit property.

77. It is observed that the learned Trial Court selectively interpreted the written statement, focusing on certain portions to infer admissions while disregarding the defendant's explicit denials and objections. For instance, while the appellant admitted to having rented the suit property, they consistently disputed the exact identity and ownership of the premises. The learned Trial Court's approach in isolating statements that seemed to favor the plaintiff without considering the appellant's comprehensive stance is erroneous.

78. The appellant has raised substantial defenses regarding the ownership of the suit property and the competency of late Sh. Y.N. Gupta to terminate the tenancy. The appellant presented a compromise decree dated 2nd November, 1964, which indicated that the property bearing no. E-22 fell into the share of Sh. Sanjay Gupta, making late Sh. Y.N. Gupta incompetent to terminate the tenancy. The learned Trial Court failed to consider this crucial piece of evidence, which directly impacts the validity of the termination notice and the subsequent suit for ejectment. According to established legal principles, admissions must be construed

in the context of the entire pleadings, not selectively. Also, even if Sh. Y.N. Gupta has expired and the said plaintiff has been substituted by his legal heirs including Sh. Sanjay Gupta, the same cannot be considered without testing its legal footing as the termination notice was initially issued by late Sh. Y.N. Gupta and as noted above, there is consistent objection towards the ownership and tenancy.

79. Upon *prima facie* perusal of the appellant's written statement, it seems that the same contains clear and categorical denials of the plaintiff's claim, particularly regarding the ownership of late Sh. Y.N. Gupta and the correct identification of the suit property. In this regard, this Court is of the view that the learned Trial Court overlooked these denials, which are crucial in determining whether there was a clear and unequivocal admission. The law mandates that admissions must be unambiguous and unconditional, and any doubt or conflicting statements should negate the existence of such admissions.

80. In the present case, upon *prima facie* perusal of the written statement, the appellant's admissions do not seem to be either clear or unequivocal, given their persistent denials and the contextual ambiguity in their statements with regard to the correct factual position. The learned Trial Court erred by not applying this legal standard rigorously.

81. The learned Trial Court also erred by not considering the entirety of the appellant's written statement, including the context and the surrounding circumstances of the admissions.

82. The appellant's contentions about the misidentification of the property and the erroneous recording in the lease deed were substantial issues that required thorough examination. By disregarding these aspects,

the learned Court below arrived at a premature conclusion of admission, which is impermissible in law.

83. The learned Trial Court relied on a site plan from an earlier suit, which was not mentioned in the plaint and was used without a proper basis. It is pertinent to mention here that the said earlier suit was dismissed as withdrawn and not adjudicated by the Court therein. The reliance on this site plan was inconsistent and contrary to legal principles, especially when the appellant disputed the suit property's description and measurement. The appellant's objections regarding the site plan and the measurement of the suit property were substantial and required proper consideration, which the learned Trial Court failed to provide.

84. The learned Trial Court's reliance on selective admissions and its interpretation of the appellant's averments went beyond the permissible scope of determining clear admissions as the Courts are required to adopt a holistic view of pleadings and should not infer admissions by piecemeal interpretation. The learned Trial Court's approach in interpreting the written statement to suit a conclusion of admission is legally flawed and against the principles of natural justice.

85. It is pertinent to state here that the appellant's consistent assertion that the suit property was part of E-22, Connaught Place, and not E-20, was a significant denial that the learned Court below failed to adequately consider.

86. Even in order dated 18th May, 2013, passed in civil suit bearing no. 149/2010, it was held that the appellant herein has the liberty to file fresh suits with respect to the two tenancies. In view of the same, it is evident

that there clearly exist issues pertaining to two different tenancies with respect to different properties.

87. The appellant has also contended that there was an understanding between the parties that the tenancies of E-20 and E-22 could be merged for the appellant's use, involving the removal of the intervening wall. This understanding was supported by a supplemental agreement clarifying that the premises let out in the year 1980 was part of E-22, not E-20. The learned Trial Court ignored this substantial defense, which required a trial for proper adjudication of the facts-in-issue. This denial directly impacted the validity of the termination notice and the plaintiff's claim of ownership. The learned Trial Court's failure to address these contentions substantively resulted in an erroneous conclusion that disregarded material facts and legal principles.

88. In conclusion, the learned Trial Court's judgment is erroneous as it misinterpreted the written statement, failed to consider clear denials, and did not adhere to the legal requirement of clear and unequivocal admissions. The learned Trial Court's selective interpretation and oversight of crucial denials led to an impermissible determination of admissions, warranting a reconsideration of the case based on a comprehensive and contextual analysis of the appellant's pleadings.

89. The discussions made in the above paragraphs shows that there are certain issues which *prima facie* seem to exist and remain unaddressed properly. Succinctly stated, the issue of unregistered and unstamped lease deed dated 20th March, 1980, mutual settlement dated 20th March, 1980, site plan (including measurement and marked portion), two separate

tenancies alleged to be merged together, usage and occupation of specific tenanted properties, etc.

90. In ***Vikrant Kapila v. Pankaja Panda***[11], the Hon'ble Supreme Court specifically held that an admission must be valid without being proved by adducing evidence and enabling the opposite party to succeed without trial. Further, a Court, while pronouncing judgment on admission has to keep in its perspective the requirements in Order VIII Rule 5, Order XII Rule 6 and Order XV Rules 1 & 2 of the CPC read with Sections 17 (admission defined, now Section 15 of the Bharatiya Sakshya Adhiniyam, 2023), 58 (facts admitted need not be proved, now Section 53 of the Bharatiya Sakshya Adhiniyam, 2023) and 68 (proof of execution of document required by law to be attested, now Section 67 of the Bharatiya Sakshya Adhiniyam, 2023) of the Indian Evidence Act, 1872.

91. Therefore**,** this Court is of the considered view that the impugned judgment is silent on a lot of aspects and the reasoning given by the learned Trial Court also lacks support of cogent evidence and clear admissions. Further, in terms of the judgment of the Division Bench of the Bombay High Court in ***Shantez v. Applause Bhansali Films Pvt. Ltd. Company (Supra)***, upon *prima facie* basis, nature of admission in the present case is neither conclusive to invite order under Order XII Rule 6 of the CPC, nor would operate as estoppel against the appellant in terms of law of evidence as the CPC contemplates an admission of fact and such admission could not be inferred.

92. Moreover, upon perusal of the impugned judgment, it seems that the learned Trial Court has taken the contentions advanced in the

[11] **2023 SCC OnLine SC 1298**

application filed by the respondent seeking judgment on admissions as it is, and without applying judicial mind, i.e., not giving enough consideration and detailed discussions to the denials and objections made by the appellant in its written statement. The learned Trial Court has erred by not applying the law as per which the admission of a fact has to be clear from the record itself and the same cannot be left to the interpretative determination by the Court.

93. Accordingly, it is held that the impugned judgment suffers from infirmity which is apparent on the face of the record and that the learned Trial Court has failed to examine the contents of the written statement, the documents available on its record as well as the contentions advanced in the application under Order XII Rule 6 of the CPC comprehensively.

CONCLUSION

94. As discussed in the preceding paragraphs, a judgment on admissions under order XII Rule 6 of the CPC can be passed only if there are clear and unequivocal admissions in the pleadings or otherwise, and if it is found that there are certain defences or objections that give rise to triable issues, it is only just that the issues raised in the suit be decided after conducting a proper trial.

95. The aforesaid provision is an enabling provision, therefore, it is neither mandatory nor pre-emptory, and however, it is discretionary. Hence, the Court, on examination of such facts and circumstances, must exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial.

96. It is also apposite to reiterate that in order to pass a judgment on admissions, the entire contents have to be taken as a whole and picking part averments as form of admissions is not the mandate.

97. This Court is of the view that the learned Trial Court erred in deciding the application in favour of the respondent herein and it is apparent from the face of the record that there are many issues which remain unaddressed and require detailed discussion. Merely holding the averments made in the written statement as alleged admissions and granting judgment on the basis of the same is not the established procedure of law. Although, the intent of the provision of Order XII Rule 6 of the CPC is expeditious disposal of a suit, however, it must not be dealt with in a casual manner, rather, proper scrutiny must be given to the alleged admissions and contents advanced thereto.

98. As per the settled position of law, admission of the fact or fact-in-issue must be clear from the record itself and cannot be left to the interpretative determination by the Court, and in the present case, the learned Trial Court erred in doing interpretative determination of the admissions alleged by the plaintiff/respondent.

99. Therefore, taking into consideration the observations made by this Court, it is held that the application under Order XII Rule 6 of the CPC filed by the respondent herein has been decided erroneously by the learned Trial Court and in exercise of the appellate jurisdiction, this Court is of the considered view that the same warrants fresh adjudication.

100. Accordingly, the following directions are passed by this Court:

a. The matter is remanded back to the learned Trial Court.

b. The learned Trial Court is directed to hear and adjudicate the application filed under Order XII Rule 6 of the CPC afresh in light of the observations made by this Court hereinabove and in accordance with the law.

c. The learned Trial Court is also directed to dispose of the matter expeditiously, preferably within one month, without giving any unnecessary adjournments to either of the parties.

d. It is made clear that the observations made by this Court shall not affect the merits of the application, and the learned Trial Court is at liberty to hear the matter afresh on its own merits, after giving due consideration to the arguments of both the parties.

101. In view of the aforesaid discussions on facts as well as law, the impugned judgment and decree dated 30th May, 2023 passed by the learned ADJ-01, New Delhi, Patiala House Courts, Delhi in civil suit bearing CS DJ no. 56700/2016 is set aside and the instant appeal is allowed.

102. Accordingly, the instant appeal stands disposed of along with pending applications, if any.

103. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

AUGUST 5, 2024
GS/RYP/AV